



SURFACE TRANSPORTATION BOARD

[Docket No. FD 36683]

Fortress Investment Group LLC et al.—Continuance in Control Exemption—East Ohio Valley Railway LLC

Fortress Investment Group LLC (Fortress), a non-carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) on behalf of FTAI Infrastructure, Inc. (FTAI Infrastructure), Percy Acquisition LLC (PALLC), and Transtar, LLC (Transtar), to continue in control of East Ohio Valley Railway LLC (EOVR) upon EOVR becoming a rail common carrier.

This transaction is related to a concurrently filed verified notice of exemption in East Ohio Valley Railway LLC—Acquisition & Operation Exemption—Ohio River Partners Shareholder LLC, Docket No. FD 36682. In that proceeding, EOVR has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to acquire from Ohio River Partners Shareholder LLC (ORPS), and operate, a 12.2-mile rail line between milepost 60.5 near Powhatan Point, Ohio, and milepost 72.7 near Hannibal, Ohio (the Line).¹

According to the verified notice, Fortress will indirectly control EOVR upon its acquiring the Line and becoming a rail carrier subsidiary of Transtar. FTAI Infrastructure is managed by an affiliate of Fortress and indirectly controls PALLC and Transtar, which currently owns and directly controls five non-connecting railroad subsidiaries: Union Railroad Company, LLC; Gary Railway Company; Delray Connecting Railroad Company; Texas & Northern Railway Company; and The Lake Terminal Railroad Company. Another Fortress affiliate, Brightline Holding LLC, owns

¹ FTAI Infrastructure has a 50.1% equity interest in ORPS.

DesertXpress Enterprises, LLC (DXE), a common carrier railroad authorized to construct a high-speed passenger rail line in California and Nevada. See DesertXpress Enters., LLC—Constr. & Operation Exemption—in Victorville, Cal. & Las Vegas, Nev., FD 35544 (STB served Oct. 25, 2011).

Fortress states that: (1) the Line does not connect with the lines of any of the rail common carriers currently owned by Transtar, nor would it connect with the proposed DXE passenger rail line; (2) this control transaction is not part of a series of anticipated transactions that would connect any of those rail common carriers; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

The earliest this transaction may be consummated is April 16, 2023, the effective date of the exemption (30 days after the verified notice was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than April 7, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36683, should be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be

served on Fortress's representative, Terence M. Hynes, Sidley Austin LLP, 1501 K Street, N.W. Washington, DC 20005.

According to Fortress, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: March 28, 2023.

By the Board, Mai T. Dinh, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

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